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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Docket No. 42060 (Sub-No. 1)
North America Freight Car Association, et al. v. BNSF Railway Company

Dear Secretary Williams:

I returned from a week-long business trip today to find BNSF's April 1, 2005, opposition to NAFCA's Amended Complaint. According to that letter, BNSF "is treating" the letter accompanying NAFCA's Amended Complaint as a motion to file, presumably to forestall a NAFCA reply to its opposition.

NAFCA did not file its Amended Complaint with a motion because no motion to amend a complaint is required by 49 C.F.R. § 1111.2. Accordingly, BNSF's April 1 letter in opposition is in essence a motion to strike or reject, making BNSF the moving party. NAFCA will reply to BNSF at greater length by the end of this week (even though Board rules allow 20 days). The purpose of this letter is to urge the Board not to act on BNSF's "opposition" without the benefit of NAFCA's reply to BNSF's arguments.

For now, NAFCA would point out only that, at a discovery conference before Board Staff on March 28, NAFCA and BNSF agreed that the Amended Complaint itself would not necessitate any change in discovery deadlines or responses in this proceeding. In addition, BNSF's letter concerning the Amended Complaint focuses almost entirely on the issue of relation back, which is different from the issue of whether NAFCA is entitled to amend its complaint.

Respectfully submitted,

Andrew P. Goldstein
Attorney for Complainants

cc: All Parties